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WAGE AND HOUR LEGISLATION FOR THE SOUTH

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I

INTRODUCTION

It is a widely known fact that standards of wages, hours, and other conditions of employment in southern industry are, on the average, considerably below those in other parts of the country. There is, at the same time, an increasing awareness among the people within the region of the need for basic economic and social reconstruction in both agriculture and industry for the purpose of achieving more adequate living standards for millions of southern families. The problem is clearly a complex one, and must be attacked on many fronts.

This pamphlet deals with an immediate problem. It seeks briefly to answer the question: What can be done now to attain fair¹ minimum labor standards in southern industry? This is an important question. An adequate answer would mean much to tens of thousands of wage earners in the region. It would mean an assurance which they do not now possess of a "floor above the cellar" of material well-being in the years ahead. If better labor standards are achieved, moreover, the task of improving the total economy of the region should be somewhat easier, for there is no more difficult task than that of working with burnt out human beings.

Maximum hour laws and minimum wage legislation have been widely used both in the United States and abroad for the control of labor standards. Since the turn of the century, a considerable volume of hours-of-labor legislation has been placed on the statute books in the southern states. As we shall see, however, the

Acknowledgment: I should like to express my appreciation to Miss Lucy Randolph Mason, General Secretary, National Consumers' League, and Dr. H. D. Wolf, Professor of Economics, University of North Carolina, for their help and encouragement in the writing of this pamphlet. Any errors of fact or interpretation are, however, my own.

¹The term "fair" is an unavoidable relative concept. It will have to be clothed with concrete meaning by appropriate public policy-making bodies.

standards set in these laws are extremely low, and their enforcement in most states has been hopelessly inadequate. What constitutes, under present conditions, a desirable standard of maximum hours in industry? That most frequently suggested is the eight-hour day, 40-hour week. This was the standard recommended for men and women by the Conference on Labor Legislation sponsored by the United States Department of Labor in February, 1934. This standard, moreover, was embodied in many of the codes of fair competition formulated under the National Recovery Act.

Experience with minimum wage laws for women and minors in the United States, and for both men and women abroad, shows conclusively the value of legislation of this type. The effect of these laws has been, in general, to raise substantially the wages of the lower paid workers, and often to encourage desirable changes in industrial methods. Later we shall examine briefly the content of minimum wage laws which have been operative in the United States.

The primary purpose of this pamphlet is to show why advanced hour laws and minimum wage legislation are needed in the South. Attention is also directed to other problems, such as that of the constitutionality of the proposed legislation, which impinge upon the main issue.

II

THE PROBLEM OF LABOR STANDARDS

How are labor standards—wages, hours, and other conditions of employment—determined? Within the framework of existing economic institutions, their determination is effected largely in two ways. They may result from unregulated bargaining between employers and workers in the labor market. This bargaining may take place between individual employers and individual workers, or between organized employer groups and organized workers. Or the bargain may be reached between highly organized employers and unorganized wage earners; occasionally this relationship is reversed. One group may have a preponderance of economic power on its side; this has been true generally of employers in the South. Labor standards determined on the basis of unregulated bargaining plainly reflect the relative strength of the contending parties.

Labor standards may also be fixed in part—and this is the second method—by governmental action. Governmental intervention in the establishment of labor standards does not abrogate the bargaining function, but it does serve to set limits within which bargaining must be carried on. In Alabama and Florida, for example, there is no legal limitation upon the hours per day or per week which women may work. In these states, on the basis of bargaining between employers and employees, a 60- or 70- or 75-hour week may become standard for women in one or more industries. In North Carolina, on the other hand, women are not permitted to work more than 55 hours per week in industrial establishments. Here the labor bargain over hours can establish a 55-hour week, or less, but legally the hours of labor of women cannot exceed this figure.

Hours and wages, however determined, lie at the heart of the labor bargain. The issues involved in minimum wage and advanced hour legislation are therefore of the greatest significance. Legislation of this character may be urged, first, for the purpose of insuring minimum standards for wage earners, and, second, as one means of obtaining a measure of industrial stability by setting limits to the competitive lowering of wages and other conditions of employment.

Perhaps the greatest virtue of the determination of labor standards through an unregulated market mechanism—that is, by unrestricted bargaining—is its simplicity. Under unregulated conditions, the price of labor, for example, is determined by the interaction of the forces of supply and demand. If there is active competition between employers for a relatively small labor supply, wages will be relatively high. If the situation changes, and the supply of labor becomes large relative to demand, wages will tend to fall. Clearly this is one way in which labor can be allocated to those who are willing to pay, *under the conditions prevailing in the labor market*,² the highest price for the available supply. Some sort of equilibrium between the demand for and the supply of labor is established. Equilibrium thus attained is not necessarily desirable, nor is this the only way in which equilibrium can be reached.

The really important questions, indeed, relate to the factors behind the demand and supply conditions which exist at any par-

² These market conditions may include inequality of bargaining power, lack of labor mobility, and many more.

ticular time. We may discover, for instance, the existence of a social situation which gives rise to a labor supply which is too large in terms of the available opportunities for gainful employment under relatively high standards in industry. The present organization of southern agriculture, as we shall see in the next section, tends to produce a situation of this nature. Or, again, we may find that particular groups of workers occupy a peculiarly weak position in bargaining over terms of employment. Some conditions of employment, such as industrial sanitation, may remain virtually untouched by the usual bargain arrived at in the labor market. These, or other factors, induce society to set aside "individualism" in the determination of labor standards, and to seek to attain equilibrium in the labor market on the basis of higher standards through social control.

It is significant that even before 1929 our individualism was not rugged enough to permit us to leave the determination of all of the items of the labor bargain to the unrestricted play of forces in the labor market. Thus even in the South, by 1929, a body of legislation relating to child labor, maximum hours for women, compensation for industrial accidents, and other matters had been placed on the statute books. The volume of this legislation, however, is not impressive, and the standards—except for excellent compensation laws in some states—are generally low. Not one southern state has even an eight-hour day, 48-hour week law for women, the best provisions being in Arkansas, Louisiana, and Texas where the nine-hour day, 54-hour week is found. There is no regulation whatever of night work for women in any of the southern states. In many states the enforcement of such laws as do exist is exceedingly poor.⁸

Unquestionably, if labor standards in the South in the future as in the past are determined largely by competitive market forces, labor conditions markedly inferior to those in other regions will continue to exist. This is not because southern employers are peculiarly greedy, as compared with employers in general. The basic reasons are found in the nature of the total southern economy.

⁸ Charles W. Pipkin, *Social Legislation in the South*, Southern Policy Papers, No. 3.

III

SOUTHERN AGRICULTURE AND THE INDUSTRIAL LABOR SUPPLY

Economic activity in the South⁴ is still predominantly agrarian in character, despite the remarkable growth of industry from the 1880's to the present time. In 1930 almost 44 per cent of the gainfully employed workers were engaged in agriculture, as contrasted with somewhat less than 17 per cent for the remainder of the nation. Southern agriculture has never provided an adequate income for the masses of the people who have practiced it. The per capita *gross* farm income in the Southern states in 1930 (excluding Florida) ranged from \$117 in Arkansas to \$172 in Virginia. Over 50 per cent of the farms in the region are operated by tenants, more than half of whom are white. Between 1910 and 1930 farm acreage declined 18 per cent, while the population within the area remained stationary. Part of the excess farm population, as we shall see, was drained off to the southern cities or has migrated from the region.

On more than a million farms (almost half the total) in the South in 1930 cotton was still a ragged king. Since that time, the cotton economy, always unstable, has become subject to new influences which may completely change the picture of southern agriculture. The shift of production to the Southwest has continued. The extension of cotton culture in other parts of the world will probably result in the partial loss of foreign markets for American cotton. The shadow of the mechanical picker, moreover, hovers over the land. In the long run these developments may greatly benefit the region. They will contribute, however, to a serious short-run problem, for competition for places in non-agricultural employments will probably increase.

There is another and more serious aspect of this problem. Despite its poverty, the South produces abundant crops of babies. Present methods of cotton culture, together with other factors, encourage a high birth rate. Professor Woofter has emphasized the fact that the natural rate of population increase in the rural South is greater than in any other large segment of the national

⁴The South as used here includes Virginia, North and South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, and Louisiana.

population.⁵ Southern population has increased more rapidly than have economic opportunities within the region. The 1930 census showed that 24,100,000 of our native born population had been born in the rural South, and that 17,500,000 of these lived in the area of their birth. Of the remainder, 2,900,000 had moved to southern cities, and 3,800,000 had left the section entirely. The net loss to the region was 3,400,000, since 400,000 people had moved to southern rural districts from other sections. Since 1930, according to Professor Woofter, the rate of increase of population has declined somewhat. Migration to cities has practically stopped, however, and there has been a marked movement back to the land. This distinctly is a depression phenomenon.

The pressure of population on the job-opportunities in industry has clearly been intense. This fact has rendered the bargaining power of southern industrial workers extraordinarily weak. Industry in the South has found little difficulty in attracting an abundant supply of labor from an impoverished agriculture. Rates of remuneration have been low relative to the rates obtained by workers of similar skill in other parts of the country. Wage differentials between the South and other regions are found not only in textiles, but also in lumber, furniture, iron and steel, coal mining, and in other industries. As Professor Heer has pointed out, "it is in the unskilled occupations capable of being filled by raw recruits from the farm that the wage differential between the South and the rest of the country reaches its maximum."⁶

There is no reason to suppose that in the near future the competition of a displaced rural population for positions in industry will diminish. This competition may, on the contrary, increase, if the rate of industrial growth in the region slows down, if southern agricultural activity continues to decline, and if opportunity for migration to other areas is curtailed. This means inevitably that labor standards, if left to the play of unregulated market forces, will remain wretchedly low. Even the non-spectacular gains registered before 1929 may partially disappear.

It is true that the encouraging growth of labor organization in the South during the past few years should aid vitally in the solu-

⁵ T. J. Woofter, *Southern Population and Social Planning*, Southern Policy Papers, No. 1.

⁶ Clarence Heer, *Income and Wages in the South*, p. 62.

tion of the problem of standards. But the road to permanent and inclusive unionism is a long one, and labor organization in the South must overcome peculiarly difficult handicaps. For some time to come the unions will probably be engaged chiefly in a type of guerrilla warfare with the employers over particularly flagrant abuses. It goes without saying that they are actively interested in labor legislation, and would welcome legislative aid in the establishment of minimum labor standards. The unions, indeed, were very active on the legislative field in the South during 1935-1936.

The only alternative is therefore to attempt, as a matter of social policy, to insure minimum standards in industry through legislative action. The objection that such a procedure will not solve the basic economic problem of the South is perfectly true. The problem of adjusting the volume of labor to the volume of natural resources and capital so as to achieve a high per capita output in the production of goods and services in the total economy of the region must be attacked on many fronts. The achievement of decent standards should aid, rather than impede, the solution of this larger problem.

For one thing, minimum standards would conserve the health and enhance the productive efficiency of the industrial workers. The economic significance of this fact is discussed briefly in section VI. It is sufficient to note here that, coldly disregarding whatever ideas we may hold on the social justice of industrial policies which lead to physical and mental degradation, minimum fair labor standards ultimately pay dividends to the community. The reason is that employers are no longer able to impose upon the community at large a part of the real costs of production, which take the form of expenditures for poor relief, sickness, and the like. The community also gains through the increased volume of production.

Another point is worth noting. From the standpoint of the well-being of the region as a whole, the present rate of population increase is plainly too large. While the farm families are largely responsible for the existence of the southern population dilemma, the rate of increase among non-rural farm families (in cotton mill villages, for example) shows few signs of diminishing.

The forces which influence the birth rate are numerous, but one of the principal of these is clearly related in some way to living standards. As groups rise in economic status, the birth rate tends to fall. Families living always near the margin of hopeless poverty have difficulty in acting with prudence and restraint, or, what is probably more important, in acquiring the knowledge necessary for such action. Thus, to the extent that industrial workers are concerned, minimum wage and maximum hour legislation, by raising living standards, should help to solve the long-run population problem of the South.

IV

LABOR STANDARDS AND INDUSTRIAL STABILITY

It is significant that a considerable number of employers in the South, especially in the textile industry, are convinced that the maintenance of labor standards is essential for industrial stability. This fact was clearly brought out in the *Hearings* on the Ellenbogen Bill, a measure designed to stabilize labor conditions in the textile industry. Although the employers and their representatives were uniform in their opposition to this particular measure, their testimony, on the whole, was favorable to the retention of at least those wage and hour standards specified in the textile code. They wished to achieve this end through voluntary agreements within the industries concerned. Dr. C. T. Murchison, president of the Cotton Textile Institute, went farther than this at one stage in his testimony.

MR. SCHNEIDER: Do you not think that it is a very desirable condition, to have a standard of minimum wage and maximum hours? Would you be in favor of legislation that would go that far, as to provide such a condition for the whole industry?

MR. MURCHISON: I think there would be no objection to that if the minimum wage figure were a figure which did not impose a relative disadvantage upon the industry in its operations. I do not believe there would be any objection. Certainly, there would be no objection to the maximum hours under the same condition.⁷

⁷ *Hearings*, H. R. 9072, 74:2, pp. 408-9.

At another point Dr. Murchison remarked with approval that to-day in the industry "the standard practice is 40 hours a week and practically all of the cotton mills are in favor of it."⁸

Mr. Robert R. West, president of the Riverside and Dan River Cotton Mills, Danville, Virginia, presented the case more decisively before a recent convention of southern textile operating executives. "Nothing demoralizes our industry so much," he asserted, "as periodic apprehension over the possibility of lower price merchandise brought about by lower wage scales."⁹ Mr. West advocated "a wage structure, supported by a basic minimum wage and held together by a framework of occupational differentials properly reflecting the skill required in the various occupations, a stable structure conscientiously adhered to by all units of the industry."

Undoubtedly these opinions reflect the views of a considerable body of employers in the region. On the other hand, numerous southern employers feel that their own interests are better served by the absence of labor standards to which they must conform. Even the majority of those employers who are most interested in the establishment of standards, however, are at present opposed to legislative action. They hope to achieve stability, in so far as wages and hours are concerned, through voluntary agreements within industry. The Cotton Textile Institute, for example, is attempting to persuade cotton manufacturers to sign a pledge that maximum hours per employee shall not exceed 40 per week, that the minimum rate of wages (except for learners and for workers partially incapacitated) shall be 30 cents per hour in the South and 32½ cents an hour in the North, that minors under 16 years of age shall not be employed, and that productive machinery shall not operate more than 80 hours in any one calendar week.¹⁰

If there is one fact which industrial history shows, it is that such voluntary agreements cannot be maintained. The desire of a few concerns to extend their markets and to increase their profits leads slowly or rapidly to the breakdown of standards in the industry as a whole. That this is already happening in cotton textiles is clear from the June, 1936, bulletin of the North Carolina Department of Labor. The bulletin shows that the employees of 24 cotton mills out of 192 in the state are working in excess of 40

⁸ *Ibid.*, p. 403.

⁹ *Morning Herald*, Durham, N. C., June 20, 1936.

¹⁰ *Hearings*, H. R. 9072, 74:2, pp. 424-26.

hours per week on the day shift, and 20 mills out of 132 are exceeding the 40-hour schedule on the night shift. Eleven mills are operating a 55-hour day shift and nine mills are on this schedule at night.¹¹

The experience of the hosiery industry since the invalidation of the National Recovery Act is even more illuminating. The National Association of Hosiery Manufacturers attempted to get 85 per cent of the productive capacity of the ladies' seamless branch of the industry under a voluntary agreement to protect hour and wage standards. This branch of the industry is important in the South. The suggested agreement retained the five-day week and two 44-hour shifts, and, in general, the minimum wage provisions of the hosiery code. The effort was abandoned on May 21, 1936, after "every argument and persuasion" had failed to enlist the support of the owners of more than 66 per cent of the productive capacity of the industry.¹²

The existence of a large supply of desperately poor people forced to accept long hours of work at low rates of pay affords a strong incentive to employer groups to resist the social determination of basic labor standards. Chambers of Commerce and other agencies in the South have too long boasted of the "advantages" of cheap labor for decisive changes in attitude to occur overnight. But plainly we shall not solve our problems by letting matters drift, as some employers realize. Those who believe that standards are necessary will have to help to cut through the knot of opposition. Experience elsewhere indicates that many employers who oppose the imposition of minimum wage standards become, after their adoption, enthusiastic advocates. When the Supreme Court in 1923 declared the District of Columbia minimum wage law unconstitutional, for example, the employers' organizations in California, which also had a minimum wage law, were vigorous in their defense of minimum wage.¹³ The California law, despite its similarity to the invalidated District of Columbia statute, has remained operative partly because the employers have not proceeded against it.

¹¹ N. C. Dept. of Labor, *Labor and Industry*, June, 1936. This report also shows that 15 out of 102 hosiery mills now exceed the 40-hour week on the day shift; 40 out of 109 furniture factories employ a shift in excess of 40 hours; the tobacco industry thus far has retained the 40-hour week; only 57 out of 252 miscellaneous manufacturing establishments were on a 40-hour basis, and only 27 out of 166 laundries.

¹² *News and Observer*, Raleigh, N. C., May 22, 1936.

¹³ Barbara N. Armstrong, *Insuring the Essentials*, p. 152.

Professor Morris points out that many employers in Oregon were favorable to the enactment of minimum wage legislation from the first, and that after the passage of the law, in 1913, additional employer support was obtained.¹⁴ An abundance of similar evidence is available.

V

MINIMUM WAGE EXPERIENCE IN THE UNITED STATES

By 1936, 17 states had some type of mandatory minimum wage law.¹⁵ Eight of these laws were enacted during the period 1933-1936, in the second wave of minimum wage legislation which this country has experienced. The laws of three states have remained inoperative through lack of appropriations. Experience with some of these laws, however, extends into the pre-war period. A recent study of the general effect which state legislation of this type has had upon wages concludes:

It may be confidently stated that in general the effects of minimum wage laws have been exactly what is claimed—the depressed wages of large numbers of women receiving the lowest pay have been raised, and the long experience of several states has shown that the fixing of a minimum has not had the effect of depressing wages at the higher levels. During a period of depression, all wages naturally show decline. Even the minimum may be set lower than it would be in years of prosperity, but the *essential fact is that the establishment of some minimum does actually fix a bottom* and thus prevent wages from falling into a hopeless abyss.¹⁶

Experience with the minimum wage provisions inserted in the codes of fair competition was perhaps too short to provide a basis for fruitful generalization. That these provisions did result in broad wage advances cannot be questioned, however. The tobacco industry (cigarette, snuff, chewing, and smoking), which employs large numbers of workers in North Carolina, Virginia, and Kentucky, is a case in point. This industry operated during the greater part of the life of the National Recovery Act under the so-called blanket code. Table I shows the average hourly earnings in the industry in March, 1933, and March, 1935.¹⁷

¹⁴ Victor P. Morris, *Oregon's Experience with Minimum Wage Legislation*, pp. 213-28.

¹⁵ Minimum wage regulation is also found in 21 foreign countries.

¹⁶ U. S. Dept. of Labor, Women's Bureau, Bulletin No. 137, *Summary of State Hour Laws for Women and Minimum Wage Rates*, 1936, pp. 3-4 (italics in original).

¹⁷ *Labor Information Bulletin*, June, 1936, pp. 4-6.

TABLE I
Average Hourly Earnings of Tobacco Workers

	March, 1933	March, 1935	Percent of increase
Males:	\$0.38	\$0.49	28.0
White	0.43	0.55	27.5
Colored	0.28	0.38	33.5
Females:	0.26	0.37	46.5
White	0.29	0.40	40.5
Colored	0.19	0.31	66.5

The percentage gains in average hourly earnings in the tobacco industry, as revealed by this table, are quite striking, being largest for the lowest paid workers. Marked increases in weekly earnings were also registered by the workers in this industry. In March, 1933, 253 out of every 1,000 workers in the industry earned less than six dollars weekly; in March, 1935, only 37 out of every 1,000 workers earned less than this amount weekly in the face of a considerable reduction in the number of hours per week.

The cotton textile industry was the first industry to formulate a code. The code was adopted on July 17, 1933. Competitive wage-cutting in this industry had begun as early as 1928. The minimum wage provisions of the code brought this wage-cutting to a close, and resulted in a sharp upward movement in hourly earnings. As in the case of the tobacco industry, the lower paid employees received the largest percentage increases. Table II shows average hourly earnings for selected occupations in cotton goods manufacturing at two dates in New England and the South.¹⁸ The wage

TABLE II
Average Hourly Earnings in Cotton Textiles, Selected Occupations

NEW ENGLAND				
	OCCUPATION	July, 1933	August, 1934	Percent of increase
<i>Males</i>				
	Loom Fixers	\$0.463	\$0.649	40.2
	Weavers	0.299	0.442	47.8
	Doffers	0.270	0.438	60.2

¹⁸ From Hinrichs, "Historical Review of Wage Rates and Wage Differentials in the Cotton Textile Industry," *Monthly Labor Review*, May, 1935.

Females

Weavers	0.280	0.435	55.3
Spinners, frame.....	0.236	0.378	60.1
Trimmers or inspectors...	0.214	0.335	56.5

SOUTH ATLANTIC AND ALABAMA

Males

Loom fixers	0.323	0.507	56.9
Weavers	0.238	0.403	68.9
Doffers	0.196	0.350	78.5

Females

Weavers	0.215	0.384	78.6
Spinners, frame	0.162	0.320	97.4
Trimmers or inspectors...	0.159	0.310	94.9

differential between New England and the South was reduced, but not eliminated. Hours were reduced to a maximum of 40 per week under the code. As we have seen, the employers in the industry are favorable to the retention of these and other provisions of their code.

Let us now return to state legislation. In the United States, state minimum wage laws have hitherto applied only to women and minors. This has been largely true also of state hour laws. The reason is found in part in the belief that stronger constitutional grounds existed for regulation in the case of women. It has been felt, moreover, that the bargaining power of women is likely to be inferior to that of men. There has also been some trade union opposition to wage legislation for men because of the mistaken notion that minimum rates tend to become maximum rates.

While minimum wage laws for women alone are clearly better than no laws at all, there is no logical reason why wage regulation should not apply to men as well as women. Practically every argument advanced for the enactment of minimum wage legislation for women applies equally well to men. The wage and hour provisions of the codes adopted under the National Recovery Act applied to both sexes. Certainly, in view of the situation existing in the South, the coverage of both men and women is desirable.

State minimum wage laws have been of two general types. The earlier type is generally known as the "cost of living" law, for it was upon this basis that rates were fixed. Laws of this character are administered by minimum wage commissions with power

to set rates in all of the occupations covered. The adverse Supreme Court decision on the District of Columbia law in 1923 halted the march of minimum wage legislation of this kind. Cost of living laws, however, are still in effect in a number of states, including California, Washington, and Oregon.¹⁹

The second type of minimum wage law is represented by the Standard Minimum Wage Bill for women and minors drafted by counsel for the National Consumers' League and approved by the United States Department of Labor. With some modifications, this bill was enacted into law in 1933 in Connecticut, Illinois, New Hampshire, New Jersey, New York, and Ohio. In 1934, Massachusetts replaced its long-standing non-mandatory law with a modified version of the Standard Bill, and the bill was enacted into law in Rhode Island in 1936. With very little change this bill could be made to apply to men as well as women and minors. A brief summary of the principal features of the bill should provide some insight into the nature of wage legislation.

The preamble to the bill states that the employment of women and minors "at wages unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern." Emphasis is placed upon the fact that the bargaining power of women and minors is generally weak. The threat to industrial stability which results from the constant lowering of wages by unscrupulous employers is also stressed.

The bill does not attempt to regulate wages generally. Unlike the cost of living type of law, provision is not made for the fixing of wages irrespective of the nature of the work done and the value of the services rendered. If, in any occupation, a substantial number of women or minors are receiving less than a subsistence wage, an investigation may be made to determine whether the wages are fairly commensurate with the value of the services rendered. If the investigation discloses that such is not the case, a wage board, representing the workers, employers, and the public may recommend to the Industrial Commissioner the establishment of minimum fair wage standards for the occupation. After a hearing, the Commissioner may put these minimum wage standards into effect.

For several months the standards are directory only; that is, publicity is depended upon to enforce their observance. If non-observance during the trial period is so persistent as to threaten

¹⁹ See Morris, *op. cit.*, for a detailed analysis of the Oregon law and its operation.

the maintenance of the standards, the Industrial Commissioner may, after a public hearing, make the observance of the standards mandatory and their violation subject to the penal law. Provision is also made for the revision of wage orders after they have been in effect for one year or more.

This brief summary of a minimum wage bill which has had an important influence on American legislation shows, among other things, that there need be nothing arbitrary in wage regulation. Abundant opportunity is afforded all interested parties to participate in the fixing of minimum wage standards. The whole complex problem of wages is brought into the open. Furthermore, since minimum wage orders are subject to revision, a necessary element of flexibility is retained even on this level of the wage structure.

VI

WAGES, HOURS, AND LABOR PRODUCTIVITY

Minimum wage legislation, if it means anything, results in higher wages for the lower paid employees, and sometimes for the better paid workers as well.²⁰ Wages are higher, in other words, than they would have been had they been determined solely by unregulated competitive forces in the labor market. It is often claimed, however, that wages determined in a competitive market measure the "value" of the services of the employee to the employer. If the employer is forced to pay in wages more than the services of the employee are "worth" to him, he will discharge a portion of his labor force. This will continue until the wages of the remaining employees equal or are slightly below the "value" of their services, measured by their contribution to the income of the enterprise. The contention, therefore, is that wage legislation may result in higher wages, but only at the cost of a larger or smaller volume of unemployment which may or may not be absorbed by other industries.

Is this contention necessarily true? Let us assume that the lower

²⁰ Experience has revealed conclusively that minimum wage rates do not tend to become maximum rates. This conclusion can also be derived from wage theory. One authority (Morris, *op. cit.*, p. 135) remarks that "quite a convincing case might be advanced to defend the proposition that the adoption of a minimum would actually operate to raise rather than lower the pay of the group above the minimum."

paid employees whose wages are to be raised through legislation are actually receiving in wages the "value" of their services. This assumption may be false, in which case the effect of minimum wage legislation may be largely to force employers to pay for the full value of the services rendered. Even if the assumption is true, however, it does not follow that minimum wage legislation will produce unemployment.

In the first place, *labor productivity, upon which wages largely depend, may be low precisely because wages are low.* Low wages mean poor diet, unsanitary housing, insufficient medical care, and a general sense of insecurity and unrest. Long hours of labor, especially in connection with low wages, produce chronic fatigue. As it happens, these conditions obtain generally in the South. They are among the fundamental causes of low labor productivity. This can be expressed in terms of labor turnover, absenteeism, careless handling of materials and machinery, poor workmanship, and the like.²¹ A minimum wage sufficient to insure at least adequate food, clothing, and shelter for the workers would enable them to produce more efficiently. Their "value" to their employers would increase. If the demand for the product of the industry or industries concerned is elastic, so that a larger output can be sold at only a slight reduction in price, no unemployment may result.

Let us look in another direction. Suppose that the *employers* as a whole are not as efficient as they might be. Poor management would then provide at least one cause of low labor productivity, which in turn would react on wages. Managerial inefficiency is found especially in regions of abundant and cheap labor.

On the assumption that horsepower provides a rough index of investment in machinery and substantial buildings, Dr. Howard W. Odum concludes that industry in the South, with 4.82 h. p. per wage earner, is somewhat more mechanized than industry in the Northeast and is about on a par with industry in the Middle

²¹ Most employers know that low wages may not mean low labor costs, for labor costs depend not only upon wages but also upon labor productivity. This is an important fact which should be realized by those agencies which seek to encourage the growth of industry in the South. The "advantages" of cheap labor, even from their point of view, are not advantages at all. The growth of industry could be fostered equally well, or better, on the basis of relatively high labor standards which, in turn, would enhance productivity. The efforts of various southern agencies to maintain the "cheapness" of labor, which includes vigorous opposition to proposed social legislation, thus serves to perpetuate a vicious circle of low labor standards, low productivity, *ad infinitum*.

Atlantic States. But in value of product per h. p. and in value added by manufacturers per h. p. the South falls considerably below the other industrial regions. Dr. Odum therefore tentatively suggests that the South is relatively inefficient in the use of its capital equipment.²² Clearly this may be attributed at least partially to poor management.

Mr. M. D. Vincent, a management expert, recently testified with regard to the textile industry:

I think it is perfectly apparent that minimum wage rates must be established. I pointed out yesterday that the cotton textile industry is paying more nearly up to its capacity to pay than many other industries. That is true. Nevertheless, the wages in this industry are far too low from a social and economic standpoint. When the industry has to pay better wage rates, undoubtedly it will be inspired by its necessities to adopt more scientific management.²³

The same statement could probably be made of other industries in the South.

If there is a considerable margin for the improvement of managerial efficiency in the South, the imposition of minimum wage rates should provide a sharp stimulus for the achievement of this end. Nothing is quite so shocking to managerial complacency as a sudden increase in costs. There is a rather large volume of evidence which shows that where minimum wages have been introduced the quality of managerial performance has increased. This has the effect, of course, of enhancing labor productivity. As in the first case, the exact effect of these changes on employment will depend upon the elasticity of the demand for the products of the regulated industries.

There is a variation of the second proposition which should be noted. It is a familiar industrial fact that wage rates for similar work (not subject either to trade union or legislative control) are likely to vary to a surprising extent between enterprises in the same industry. In other words, within any *general* level of efficiency, as discussed above, wide variations in the efficiency of individual enterprises exist. Low wages provide a subsidy for the poor management of the less efficient plants. Suppose now that the minimum wage standards of the better managed plants are made gen-

²² Howard W. Odum, *Southern Regions of the United States*, pp. 437-39.

²³ *Hearings*, H. R. 9072, 74:1, p. 631.

eral throughout the industry.²⁴ In this case the less efficient plants must either better organize production, or, in the long run, go out of business. If the latter eventuality happens, a transfer of workers from the bankrupt to the efficient concerns should occur.

Even if, within a given industry, wage regulation results in some unemployment, this does not necessarily mean that wage regulation cannot increase the total income of the working class. If the demand for labor in the regulated industries is inelastic, an increase in wages would produce a relatively small displacement of men. These might then be absorbed by other industries and occupations, characterized by the elasticity of their demand for labor, without a proportionate drop in wages. The total incomes of both groups of workers would then be greater than before.

Thus far in this section we have assumed that an increase in wages produces no change in the supply of labor. In the long run, as we saw in section III, the establishment of decent minimum labor standards should serve to reduce the supply of labor in the future by influencing the birth rate. The effect of this will not be felt, however, for a generation or more. Within limits, at any given time, the supply of labor is variable. Boys and girls, for example, may decide to stay in school for a year or two longer, or they may decide earlier than usual to seek gainful employment. Child labor laws clearly influence this aspect of the supply of labor. Some men are able to choose between working for wages and some alternative means of making a living, such as opening a small store. There are wide variations in the proportion of women who are gainfully employed. Moreover, the supply of labor depends also upon the number of hours in the day and the number of days in the year that men and women are willing to work. If hours of labor are shortened, night work for women forbidden, and holidays and vacations provided for, the result obviously is a contraction in the available labor supply. The supply of labor depends, furthermore, upon the intensity with which men and women work.

Clearly, even in short periods, the possible variations in the supply of labor are relatively large. A reduction in the hours of labor to 40 per week, for example, would reduce the supply of labor considerably in the South and in the nation as a whole, provided other factors remained the same. The effect of increasing wages upon the

²⁴ The problem is somewhat different if the standards are fixed above those of the better plants.

size of the labor supply is somewhat uncertain. More potential workers might offer themselves in the labor market. On the other hand, the proportion of women who work is large where wages are low. Minimum standards might enable many women now gainfully employed to devote their full time to homemaking. The average age at which young people seek gainful employment might be raised. If the net effect of the establishment of minimum standards were to decrease the labor supply, the services of wage earners would become relatively more valuable.

These matters are complicated. This section is designed to show simply that wage regulation can be used to increase labor incomes without the dire effect on employment which the older practitioners of the "dismal science" of economics envisioned. Some of the advantages and possibilities of wage regulation should be apparent.

VII

THE CONSTITUTIONAL ISSUE

If we grant that maximum hour and minimum wage standards are desirable, the question immediately arises: Is such legislation constitutional? In the long run, legal barriers to the creation of progressive economic institutions are hurdled in one way or another. It is undeniable, however, that for a time outmoded constitutional provisions, or constitutional provisions interpreted in an outmoded way, may delay seriously the enactment of necessary social legislation.

The power of the states to limit the hours of labor of women and children has been upheld repeatedly by the courts, including the Supreme Court of the United States, as a valid exercise of the police power. There is no question of the constitutionality of laws limiting the hours of labor of men in certain types of employment (on street railways, for example) where the welfare of the public is peculiarly affected, or in particularly dangerous occupations such as mining. The Supreme Court decision in the *Bunting* case,²⁵ in which an Oregon statute limiting the hours of labor of any person, whether man or woman, working in any mill, factory, or

²⁵ *Bunting v. Oregon*, 243 U. S. 426, 438 (1917). See also "Legal Restrictions on Hours of Labor of Men in the United States," *Monthly Labor Review*, Jan., 1933.

manufacturing establishment to ten hours per day, with a proviso as to overtime, was declared constitutional, seems clearly to establish a precedent for the coverage of men as well as women.

Minimum wage laws have had a tortuous history before the courts. Cases involving the minimum wage law of Oregon came before the United States Supreme Court in 1914, after the lower and appellate courts and the Supreme Court of the state had upheld the law. The cases were argued in 1914 and reargued in 1917 in which year the validity of the law was affirmed. Unfortunately, the decision was by an equally divided court (a *per curiam* decision), for Mr. Justice Brandeis, who had defended the measure before the Oregon Supreme Court, took no part in the consideration and decision of the cases. It is well known that Justice Brandeis was favorable to this type of legislation. Had he sat on the case, the constitutionality of minimum wage laws would have been firmly established.

Then (after four changes had occurred in the composition of the Court) came the celebrated Adkins case, involving the constitutionality of the minimum wage law of the District of Columbia. The law was declared unconstitutional on April 9, 1923, by a five to three vote, Justice Brandeis not sitting.

The majority in the Adkins case held that the fixing of minimum wages for women in private industry violated the due process clause of the Fifth Amendment to the Federal Constitution, and, moreover, that such legislation was not within the police power of the government. Mr. Chief Justice Taft, who dissented from the majority, suggested that "it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound." Two years later, on the authority of the Adkins case, the minimum wage law of Arizona was invalidated. This decision construed the Fourteenth Amendment to forbid the enactment by the states of minimum wage laws for women, as the Adkins case, as far as the federal government was concerned, had construed the Fifth Amendment.

The minimum wage laws passed in 1933, and based upon the Standard Bill of the National Consumers' League, attempted to meet the constitutional objections raised by the Supreme Court majority in the Adkins case. The recent decision in the New York minimum wage case (June 1, 1936), however, destroyed the hope

that this end had been achieved. The five justices constituting the majority could see no difference between the New York and the District of Columbia laws. "The state," said Mr. Justice Butler, "is without power by any form of legislation to prohibit, change, or nullify contracts between employers and adult women workers as to the amount of wages to be paid."

In dissenting from this position, Mr. Justice Stone (Justices Brandeis and Cardozo joined in this dissent; Mr. Chief Justice Hughes disagreed with the majority decision on somewhat different grounds) made as fine a case for wage regulation as we are likely to discover. He wrote, in part:

There is grim irony in speaking of the freedom of contract of those who, because of their economic necessities, give their service for less than is needful to keep body and soul together. But if this is freedom of contract no one has ever denied that it is freedom which may be restrained, notwithstanding the Fourteenth Amendment, by a statute passed in the public interest. . . .

No one doubts that the presence in the community of a large number of those compelled by economic necessity to accept a wage less than is needful for subsistence is a matter of grave public concern, the more so when, as has been demonstrated here, it tends to produce ill health, immorality and deterioration of the race.

The fact that at one time or another Congress and the legislatures of seventeen states, and the legislative bodies of twenty-one foreign countries, including Great Britain and its four commonwealths, have found wage regulation is an appropriate corrective for serious social and economic maladjustments growing out of inequality of bargaining power, precludes, for me, any assumption that it is a remedy beyond the bounds of reason.

It is difficult to imagine any grounds, other than our own personal economic predilections, for saying that the contract of employment is any the less an appropriate subject of legislation than are scores of others, in dealing with which this court has held that legislatures may curtail individual freedom in the public interest. . . .

Plainly we cannot permit, in the words of Mr. Justice Stone, the "personal economic predilections" held by the gentlemen who at present constitute the majority of the United States Supreme Court to stop the enactment of socially desirable legislation. Leaving aside for a moment the question of a constitutional amendment, which is discussed below, can anything be done at once?

Some hope was entertained that favorable action would result

from the petition of New York, Massachusetts, and Ohio to the Supreme Court for a rehearing of the New York minimum wage case. On October 13, 1936, the Court refused to grant a rehearing. On the same day, however, the Court agreed to consider a case involving the minimum wage law of the state of Washington. This law, enacted in 1913, has been upheld by the highest judicial body of that state. There is perhaps a slim chance that the Court will uphold the validity of the law. This chance, unfortunately, is slim indeed.

In the meantime, regardless of Supreme Court decisions, the opinion is widespread that the benefits already achieved by state minimum wage laws must be preserved. Secretary of Labor Perkins, in commenting on the New York decision, declared that "the gains to workers resulting from the existing wage orders are striking, the community gains are equally so, and we dare not lose them." A Department of Labor press release on June 17, 1936, stated that a conference of representatives from eleven states having minimum wage laws for women had decided to continue to enforce the laws in their states. The conference also felt that something could be done through reliance on non-mandatory wage orders. Massachusetts, immediately after the New York decision, enacted a new law which placed its wage fixing machinery on a health basis.

VIII

AMEND THE CONSTITUTION

We need unquestionably a constitutional amendment which will give unequivocally to Congress and to the state legislatures the power to enact social legislation in the public interest. We need an amendment so clear that its purpose cannot be frustrated by judicial interpretation. And we need that amendment quickly if we wish to cope in orderly fashion with the vast social and economic problems thrown up by a highly developed, intensely dynamic machine civilization.

The history of state minimum wage legislation, and its fate at the hands of the Supreme Court, points the moral and adorns the tale. The story which has been sketched here is not a pretty one. But for an historical accident, the constitutionality of state

minimum wage legislation would have been established in 1917. A change of one vote in the decisions of 1923 or 1936 would have upheld minimum wage. Such is the narrow base of decisions which tore from the statute books legislation which affected vitally the economic well-being of thousands of women wage earners.

Suppose the defeat of minimum wage legislation at the hands of the Court had been more decisive, or suppose even that this specific type of social legislation had been upheld. Would the realization of either of these suppositions alter the need for an amendment of the kind urged here? The answer must be negative, for clearly there is today a broad area for social action over which the appropriate legislative bodies must have control. And this control must not depend upon so fickle a thing as judicial interpretation of constitutional clauses formulated for a simpler age. The Fathers did not consider the Constitution perfect; hence their provision for its amendment.

IX

INTERSTATE COMPETITION

In the previous section the necessity for a constitutional amendment to give power to the federal government, as well as to the states, to enact social legislation in the public interest was emphasized. The reason for the inclusion of the federal government should be perfectly plain. State lines, as everyone knows, do not coincide with economic boundaries. Textile manufacturers in North Carolina, for example, compete with textile manufacturers in other states in the marketing of their products. One serious problem in connection with state wage and hour legislation—and other types of state social legislation as well—arises from this fact. Desirable social legislation often does not get through state legislatures because of the fear of penalizing groups of employers within the state in their competitive struggle with employers in other states. This situation, in fact, frequently leads to a vicious circle, in which similar legislation in two or more states is defeated in each on the ground that it is not found in the other.

All wage earners within any state are not employed in industries subject to a significant degree of interstate competition. This

is true of workers employed in retail trade, laundries, dry cleaning establishments, and the like. Quite a bit of the wage regulation in those states having minimum wage laws is found in employments and industries not subject to much competition from concerns in other states. On the other hand, regulation in some states (California, Massachusetts, and Wisconsin, for example) covers industries subject to considerable interstate competition.

If, moreover, the establishment of minimum standards results in greatly improved labor productivity, the concerns in the state adopting regulation may not find themselves at a competitive disadvantage. Despite better wage and hour standards, in other words, production costs per unit of output may not increase. This is most likely to happen if the policies of the more efficient employers are accepted as standard. While this may not be the most desirable basis for the setting of minimum wage standards, it would, in the situation we are discussing, result in a minimum of economic dislocation.

Some attention recently has been given to the subject of interstate compacts as a technique for the elimination of the factor of interstate competition in the field of state labor legislation.²⁶ Probably little can be hoped for from this device, however; it is cumbersome, and may easily be used to block rather than to expedite the passage of legislation.

For those industries subject to intense interstate competition, the federal government is beyond doubt a more appropriate agency than the state governments for the control of labor standards. The Supreme Court decision in the *Guffey Coal Act* case has temporarily checked the move for federal action in this direction. Minimum wage and maximum hour standards for specific industries (such as coal mining, textiles, tobacco, and others) established under the supervision of the federal government would clearly eliminate the problem of interstate competition more readily than the cumbersome interstate compacts mentioned above. Here again, of course, the constitutional issue must be met.

Even if federal action in the field of wage and hour legislation proves possible in the near future, state legislation would still be desirable. In the first place, the states are probably better suited to regulate those industries not affected seriously by interstate com-

²⁶ See *Monthly Labor Review*, July, 1934, pp. 61-65, for an example of an actual interstate compact in this field.

petition. In the second place, in view of our governmental set-up, a bulwark of state labor legislation seems desirable. Finally, the more progressive states can pioneer in the direction of higher standards, as they have in the past.

X

WHAT CAN BE DONE

There are a number of things that can be done immediately in the South to meet the situation described in this pamphlet.

1. Hours of labor can be shortened through state legislation. Our present standards are outrageously low. Perhaps a lead was given by the passage in South Carolina in May, 1936, of a 40-hour week, eight-hour day law covering all persons employed in cotton, silk, or woollen textile mills. The law becomes effective, however, only when Georgia and North Carolina adopt similar legislation. The act covers, of course, only a few types of employment. Legislation in the field of night work for women is badly needed. The ratification of the federal child labor amendment, and the strengthening of existing state child labor laws, should also be accomplished. The constitutional issue does not intrude upon these matters.

2. In general, the enforcement of such labor legislation as does exist in the South is poor. Florida and Mississippi do not even have departments of labor. Clearly strong labor law enforcement agencies should be built in each state.

3. Minimum wage legislation is tremendously important. Even in view of the adverse Supreme Court decisions on existing state laws, it is conceivable that grounds for their enactment will be found. (The reader will recall that Massachusetts has placed its law upon a health basis.) At the very least, pending a constitutional amendment, the states can enact non-mandatory laws—laws, that is, that depend upon publicity for their enforcement. This would have the important effect of bringing the tangled problems of wages into the open, and would create machinery that could later be used under mandatory provisions.

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